



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2014/09/212)



Fair Competition
For Greater Good

02.02.2015

Notice u/s 6 (2) of the Competition Act, 2002 given by FMC Corporation

Order under Section 31(1) of the Competition Act, 2002

1. On 30th September 2014, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) filed by FMC Corporation (“**FMC**” or **Acquirer**”).
2. The notice was given pursuant to a share purchase agreement executed between FMC and Auriga Industries A/S (“**Auriga**”) on 8th September 2014 (“**SPA**”). Pursuant to the SPA, FMC will purchase, either directly or through a wholly-owned subsidiary, the entire issued and outstanding share capital of Cheminova A/S (“**Cheminova**”) from Auriga. At present, Cheminova is a wholly-owned subsidiary of Auriga and after the proposed combination it will become a subsidiary of FMC. (Hereinafter FMC and Cheminova are collectively referred to as “**Parties**”).
3. The proposed combination falls under section 5 (a) of the Act.
4. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), vide letter dated 10th October, 2014, FMC was required to remove certain defects and provide information/document latest by 20th October, 2014. FMC filed its response on 22nd October, 2014, after seeking extension. As certain defects were found in the response, in terms of Regulation 14 of the Combination Regulations, vide letter dated 24th October, 2014, FMC was required to remove defects and provide certain information/document. FMC filed its response on 5th November, 2014. Further, as certain defects were found in the response and additional information was also required, in terms of Regulations 14, sub-regulation (4) of regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, FMC was asked to remove the defects and provide the additional information vide letter dated 12th November 2014. FMC filed its response on 19th November 2014. In terms of Regulation 14 of the Combination Regulations, vide



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letter 21st November 2014, FMC was further required to provide the complete information and certain additional information by 5th December 2014. FMC filed its response on 10th December 2014 after seeking extension of time. In terms of Regulation 14 of the Combination Regulations, vide letter dated 12th December 2014, FMC was again required to provide complete information which it submitted on 19th December 2014. In terms of Regulation 14 of the Combination Regulations, vide letter dated 23rd December 2014, FMC was again required to remove certain defects to which it filed its response on 6th January 2015 after seeking extension of time. Further, in terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, vide letter dated 14th January 2015, FMC was again required to provide additional information; the response to which was given by it on 19th January, 2015. FMC was also required to remove certain defects in its earlier responses vide e-mail dated 21st January 2015, the response to which was submitted on 22nd January, 2015.

5. The Commission in its meeting held on 5th December, 2015 decided that in terms of Regulation 34 of the Combination Regulations, letters, each dated 5th December 2014, be sent to government organizations, namely Plant Protection Division (“PPD”) of the Department of Agriculture and Cooperation (“DAC”), Central Insecticides Board & Registration Committee (“CIB&RC”), Indian Council of Agricultural Research (“ICAR”) and Indian Agricultural Research Institute (“IARI”), to seek information on certain issues relating to the proposed combination. In the same meeting, the Commission also decided to seek information in terms of sub-regulation (3) of Regulation 19 of the Combination Regulations. Accordingly, letters, each dated 5th December, 2014, were sent to certain enterprises operating in India for seeking information relevant for the assessment of the proposed combination.
6. FMC, a company listed on the New York Stock Exchange and the Chicago Stock Exchange, is stated to be operating in various business segments, namely, agricultural solutions; health and nutrition; and minerals. Under the agricultural solutions segment, FMC develops, markets and sells agrochemicals such as insecticides, herbicides, fungicides and plant growth regulators (“PGRs”). The health and nutrition segment of FMC is stated to focus on food, pharmaceutical ingredients,



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nutraceuticals, etc. In the minerals segment, FMC manufactures a wide range of inorganic materials. Through its subsidiary namely FMC India Pvt. Ltd. (**FMC India**), FMC operates in all three business segments in India.

7. Cheminova is incorporated and registered under the laws of Denmark. It is a wholly owned subsidiary of Auriga, a company listed on the NASDAQ OMX Copenhagen Stock Exchange. It is stated to be primarily engaged in the business of development, production and marketing of various agrochemicals products including insecticides, herbicides and fungicides. Cheminova's product range also includes intermediates, plant growth regulators/promoters, micro-nutrients for use in agriculture etc. Cheminova is present in India through its wholly owned subsidiary namely Cheminova India Limited (**Cheminova India**) which is stated to be primarily engaged in manufacturing and marketing of agrochemicals, including insecticides, herbicides, fungicides and growth promoters, in India. Apart from above, it is also stated to be engaged in the production of intermediates and technical grade products which are used in the process of manufacturing formulated agrochemicals products.
8. The Commission considered the details provided in the notice, various submissions of the Parties from time to time, information received from the government organisations and certain enterprises along with other relevant information available in public domain and observed that the Parties are engaged in manufacturing and sale of formulations in each of the broader segments of insecticides, herbicides, fungicides and PGRs in India. With regards to technical grade products, it is observed that while Cheminova is actively engaged in the manufacture and sale of technical grade products in India, FMC only trades in technical grade products. As far as intermediates are concerned, it is observed that only Cheminova is engaged in the business of intermediate products in India.
9. The competition assessment of the proposed combination, therefore, relates to the agrochemical products namely insecticides, herbicides, fungicides and PGRs. These products are used in agriculture to enhance crop yield and quality by protecting the crops against certain forms of damages which might be caused to the crops by the pests, i.e., weeds, insects or fungi. Accordingly, agrochemical products are normally further sub-divided based on (i) end use due to distinct types of target



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organisms/pests and application; (ii) separate classification by the industry; and (iii) consumer preferences guided by specific demand for a particular type of agrochemicals product.

10. With regard to the formulations of the Parties within each of the broad segment of insecticides, herbicides, fungicides and PGRs, it is observed that these have applications based on the type of crop and target pest i.e. insect, weed or fungi. The Commission, on the basis of submissions of the Parties and information received from the aforementioned government organizations, has observed that some of the formulations of the Parties are identical in terms of their chemical composition while others may be considered as substitutes in terms of their applications and use.
11. As regards the formulations of the Parties which may be considered as substitutable from the point of view of their chemical composition or in terms of their application and use, it is further observed that in such categories either the incremental market share resulting from the proposed combination is insignificant or other substitute formulations of competitors are available for each category (in terms of use). Accordingly, in view of the aforesaid, the exact delineation of the relevant market is left open in the assessment of the proposed combination. In this regard, it is also observed that a majority of the formulations of the Parties are generic formulations and other players in the market are free to manufacture and sell these formulations. It is also observed that the market for agrochemicals in India is characterized by the presence of a large number of domestic and multinational players such as Bayer, Syngenta, BASF, Dow Agro Sciences, DuPont, Dhanuka Agritech, Rallis India, etc. These players are engaged in nearly all the broad segments of the agrochemical products in India. Besides these large players, the market of agrochemical products is characterized by a number of smaller competitors manufacturing these products in India.
12. As regards the technical grade products of the Parties, it is observed that none of the products of the Parties are substitutable in terms of their chemical composition. In case of formulations which are derived from technical grade products of the Parties and may be regarded as substitutable in terms of their application and use, it is observed that a number of products of the competitors are available as substitutes.



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13. Further, it is observed that there is no significant vertical relationship between the Parties except a supply arrangement pursuant to which Cheminova India purchases one of the FMC India's products and sells it under its brand name. As already stated above, as there are other domestic and global players who are engaged in all the segments of agrochemical products, having substitutable products competing with the products of the Parties, the vertical relationship between the Parties, as stated above, is not likely to raise any competition concern.
14. Considering the facts on record and the details provided in the notice given under sub-section (2) of section 6 of the Act and assessment of the proposed combination on the basis of factors stated in sub-section (4) of section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of section 31 of the Act.
15. This approval is without prejudice to any other legal/statutory obligations as applicable.
16. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
17. The Secretary is directed to communicate to the Acquirer accordingly.